

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHAKILA JOSEPH, CASE NO. 1:05-CV-00184-AWI-SMS-P

FINDINGS AND RECOMMENDATIONS RECOMMENDING DISMISSAL OF CERTAIN CLAIMS AND DEFENDANTS

J. S. WOODFORD, et al., (Doc. 14)

Defendants.

I. Findings and Recommendations Following Screening of Amended Complaint

A. Screening Requirement

Plaintiff Shakla Joseph (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 2000cc-1 (Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”)). Plaintiff filed this action on February 9, 2005. On November 1, 2005, the court dismissed plaintiff’s complaint, with leave to amend, for failure to state any claims upon which relief may be granted. Plaintiff filed an amended complaint on December 7, 2005.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall

1 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
2 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
4 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.
5 506, 512 (2002); Fed. R. Civ. Pro. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short
6 and plain statement of the claim showing that the pleader is entitled to relief . . .” Fed. R. Civ. Pro.
7 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is
8 and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. A court may dismiss a
9 complaint only if it is clear that no relief could be granted under any set of facts that could be proved
10 consistent with the allegations. Id. at 514. “The issue is not whether a plaintiff will ultimately
11 prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may
12 appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the
13 test.” Jackson v. Carey, 353 F.3d 750, 755 (9th Cir. 2003) (quoting Scheuer v. Rhodes, 416 U.S.
14 232, 236 (1974)); see also Austin v. Terhune, 367 F.3d 1167, 1171 (9th Cir. 2004) (“Pleadings need
15 suffice only to put the opposing party on notice of the claim . . .” (quoting Fontana v. Haskin, 262
16 F.3d 871, 977 (9th Cir. 2001))). However, “the liberal pleading standard . . . applies only to a
17 plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330 n.9 (1989). “[A] liberal
18 interpretation of a civil rights complaint may not supply essential elements of the claim that were not
19 initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting
20 Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

21 B. Plaintiff’s RLUIPA Claim

22 The events at issue in the instant action allegedly occurred at the California Substance Abuse
23 Treatment Facility and State Prison-Corcoran, where plaintiff is presently incarcerated. Plaintiff
24 alleges that he is a Rastafarian Nazarite and is prohibited by his religion from cutting his hair.
25 Plaintiff alleges that the California Department of Corrections and Rehabilitation (“CDCR”) has a
26 grooming regulation which mandates that male inmates’ hair be no longer than three inches.
27 Plaintiff alleges that he has been subject to progressive discipline for failing to comply with the
28 grooming regulation, which burdens the exercise of his religion.

1 The Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”) provides:

2 No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution. . . , even if the burden results from
3 a rule of general applicability, unless the government demonstrates that imposition
4 of the burden on that person—

- 5 (1) is in furtherance of a compelling government interest; and
6 (2) is the least restrictive means of furthering that compelling government interest.

7 42 U.S.C. § 2000cc-1. Under RLUIPA, plaintiff bears the initial burden of demonstrating that the
8 grooming regulation “and its punitive sanctions designed to coerce him to comply with that policy
9 constitute a substantial burden on the exercise of his religious beliefs.” Warsoldier v. Woodford,
10 418 F.3d 989, 994-95 (9th Cir. 2005). If plaintiff meets his burden, defendants bear the burden of
11 demonstrating that “any substantial burden of [plaintiff’s] exercise of his religious beliefs is *both* in
12 furtherance of a compelling governmental interest *and* the least restrictive means of furthering that
13 compelling governmental interest.” Id. (emphasis in original). “RLUIPA is to be construed broadly
14 in favor of protecting an inmate’s right to exercise his religious beliefs.” Id. The Ninth Circuit has
15 ruled that “punishments to coerce a religious adherent to forgo her or his religious beliefs is an
16 infringement on religious exercise.” Id. at 996.

17 Plaintiff’s allegations are sufficient to give rise to a claim for relief for violation of RLUIPA
18 against defendants Daviega, Pursell, Hooker, Fulks, Anderson, Flore, and Adams because plaintiff
19 has alleged facts supporting a claim that they burdened the practice of his religion via their
20 involvement in disciplining him for failing to comply with the grooming regulation. However,
21 plaintiff has not alleged any facts indicating that defendants Schwarzenegger, Woodford, and
22 Hickman were personally involved in the violation of plaintiff’s rights.

23 Neither the state nor state officials acting in their official capacities are persons under section
24 1983. Will v. Michigan Dep’t of State Police, 491 U.S. 58, 71 (1989). However, state officials
25 acting in their officials capacities are persons under section 1983 if the claim is one for prospective
26 injunctive relief. Id. at 71 n.10. As discussed in the preceding paragraph, plaintiff has not alleged
27 any facts suggesting the personal involvement of defendants Schwarzenegger, Woodford, and
28 Hickman, and an official capacity suit against them is barred unless plaintiff is seeking prospective
relief. In this instance, plaintiff has not alleged any such claim. To the extent that plaintiff’s

1 requests for a rehearing on his disciplinary violations, removal of all references to the violations from
2 plaintiff's central file and other files, and a review of plaintiff's case factors for parole suitability
3 constitute requests for prospective relief,¹ there is no indication that Schwarzenegger, Woodford, and
4 Hickman are able to provide the requested relief and as such are proper defendants. Schwarzenegger
5 is the governor and Woodford and Hickman are both former Directors of CDCR. Defendant Adams,
6 as the warden of CSATF, appears to be the one in the position to provide those forms of relief,
7 should plaintiff prevail in this action. Therefore, the court shall recommend that defendants
8 Schwarzenegger, Woodford, and Hickman be dismissed from this action on the grounds that they
9 are not persons within the meaning of section 1983 and the exception for claims seeking prospective
10 injunctive relief is not applicable. In addition, although he does not name them as defendants,
11 plaintiff alleges in his complaint that the State of California and CDCR are liable to him. Plaintiff
12 may not pursue any claims for relief against the state and CDCR because they are not persons within
13 the meaning of section 1983. Id. at 71.

14 In addition to seeking damages and the forms of injunctive relief set forth above, plaintiff is
15 seeking declaratory relief and an injunction prohibiting enforcement of the grooming regulation
16 against plaintiff. “[T]he basis for injunctive relief in the federal courts [is] . . . irreparable injury and
17 the inadequacy of legal remedies.” Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982).
18 Further, a declaratory judgment may only issue if there exists “a case of actual controversy” before
19 the court. 28 U.S.C. § 2201(a); Societe de Conditionnement en Aluminium v. Hunter Engineering
20 Co., Inc., 655 F.2d 938, 942 (9th Cir. 1981). “A case or controversy exists justifying declaratory
21 relief only when ‘the challenged government activity is not contingent, has not evaporated or
22 disappeared, and, by its continuing and brooding presence, casts what may well be a substantial
23 adverse effect on the interests of the petitioning parties.’” Headwaters, Inc. v. Bureau of Land
24 Management, Medford Dist., 893 F.2d 1012, 1015 (9th Cir. 1989) (quoting Super Tire Engineering
25 Co. v. McCorkle, 416 U.S. 115, 122 (1974)).

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28 ¹ As discussed in the following paragraphs, plaintiff's claim for declaratory relief and an injunction
prohibiting enforcement of the grooming regulation against plaintiff have been rendered moot by an amendment to
the regulation.

1 On January 17, 2006, CDCR made an emergency amendment to the grooming regulation,
2 which now permits inmates to wear their hair as long as they want to as long as the face is not
3 obscured. Cal. Code Regs., tit. 15 § 3062(e) (2006). Based on this amendment, plaintiff's claims
4 for declaratory relief and an injunction prohibiting enforcement of the grooming regulation against
5 plaintiff are now moot.

6 C. Conclusion

7 The court finds that plaintiff's amended complaint states a cognizable claim for relief under
8 RLUIPA against defendants Daviega, Pursell, Hooker, Fulks, Anderson, Flore, and Adams.
9 However, the court finds that plaintiff's amended complaint does not state a cognizable claim for
10 relief against defendants Schwarzenegger, Woodford, Hickman, the State of California, and the
11 California Department of Corrections and Rehabilitation, or for declaratory relief and an injunction
12 prohibiting enforcement of the grooming regulation. Accordingly, based on the foregoing, it is
13 HEREBY RECOMMENDED that:

- 14 1. This action proceed on plaintiff's amended complaint, filed December 7, 2005,
15 against defendants Daviega, Pursell, Hooker, Fulks, Anderson, Flore, and Adams on
16 plaintiff's RLUIPA claim;
- 17 2. Defendants Schwarzenegger, Woodford, and Hickman, and the State of California
18 and the California Department of Corrections and Rehabilitation to the extent they
19 are defendants, be dismissed from this action on the ground that they are not persons
20 within the meaning of section 1983; and
- 21 3. Plaintiff's claims for declaratory relief and an injunction prohibiting enforcement of
22 the grooming regulation be dismissed as moot.

23 These Findings and Recommendations will be submitted to the United States District
24 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty**
25 **(30)** days after being served with these Findings and Recommendations, plaintiff may file written
26 objections with the court. The document should be captioned "Objections to Magistrate Judge's
27 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
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1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
2 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 **Dated:** June 16, 2006
6 icido3

7 /s/ Sandra M. Snyder
8 UNITED STATES MAGISTRATE JUDGE
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